

## § 996.30

## 15 CFR Ch. IX (1–1–11 Edition)

conduct audits without advance notification. However, visits to companies' facilities will be scheduled. Audits may include, but are not limited to:

(1) The producing companies as it may affect the certified product;

(2) Certified products;

(3) Processes used in making, distributing, and marketing certified products;

(4) Use of the NOAA emblem;

(5) Examination of manufacturers' public claims about certified hydrographic products;

(6) Other relevant criteria as they become apparent.

(b) NOAA may decertify a hydrographic product based on the findings of an audit. In general, a hydrographic product may be decertified if:

(1) The results of an audit indicate that the product no longer meets the standards under which it was certified;

(2) The product has been substantively changed from the product that was tested and certified;

(3) Implied or actual claims about the product, and/or other data or products linked to the product, are judged by NOAA to be untrue or misleading;

(4) The NOAA emblem was improperly or inappropriately displayed;

(5) Other relevant reasons as they become apparent.

(c) A producing company may decline to reveal information during an audit that it declares to be proprietary or for other reasons. In this eventuality, NOAA reserves the right to decertify based on lack of information should it deem that action appropriate.

(d) The entity producing the certified hydrographic product shall be notified in writing of NOAA's intent to decertify that product. Said entity shall have 30 days to request reconsideration of that intended action in writing to the Quality Assurance Program address. Said request shall contain the identification of the hydrographic product, the requestor, and sufficient information for NOAA to make a determination on the request for reconsideration. Alternatively, the entity may correct the deficiencies cited by NOAA within 30 days, notify NOAA in writing at the Quality Assurance Program address of the corrective action taken, and provide sufficient evidence for

NOAA to judge the correctness and effectiveness of the corrective action taken.

(e) If a request for reconsideration is submitted, or if the producing entity asserts that the deficiencies have been corrected, NOAA shall have 60 calendar days, if its other obligations permit, to consider the request for reconsideration or the corrective action, at which time NOAA shall issue its decertification decision. The decision and NOAA's reason for its action shall be made public in the FEDERAL REGISTER or by other appropriate means, and the producing entity shall be notified in writing.

(f) NOAA's decertification, if unappealed or uncorrected within 30 days, shall be considered final. NOAA shall notify the producing entity of this action in writing, and announce the decertification in the FEDERAL REGISTER or by other appropriate means.

(g) Upon decertification, manufacturers shall discontinue all claims of certification, and shall discontinue use of the NOAA emblem.

### Subpart D—Other Quality Assurance Program Matters

#### § 996.30 Use of the NOAA emblem.

(a) Use of the NOAA emblem on certified hydrographic products requires separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency or the Department. If the NOAA emblem is used on products that include other data or products, clear indication shall be made as to what is NOAA certified, and what is not NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA. Requests for use of the NOAA emblem shall be submitted in writing to the Quality Assurance Program address, and shall include:

(1) Name and description of the hydrographic product(s) on which the emblem will be displayed.

(2) Name and contact information for the entity requesting use of the NOAA emblem.

(3) Exact samples of all uses intended for the NOAA emblem including text claims with, within, or associated with the hydrographic product, its packaging, and advertising that a reasonable person might associate with the NOAA emblem.

(4) Proof of NOAA certification.

(5) Other relevant information as may later be specified.

(b) [Reserved]

**§ 996.31 Termination of the Quality Assurance Program.**

(a) NOAA reserves the right to terminate the Quality Assurance Program for a particular hydrographic product or class at any time before certification is awarded if it is deemed to be in the public interest to do so. NOAA shall give written notification to the sponsor and other interested parties should it decide to exercise this option, and shall state the reasons for its action. Reasons for termination may include, but are not limited to:

(1) The inability of the standards-drafting group to reach a consensus on the content of the standard;

(2) Valid objections to the existence of NOAA-certification of a particular hydrographic product or class;

(3) A negative impact on public safety should the hydrographic product receive certification;

(4) Other relevant reasons as they become apparent.

(b) The sponsor or other interested parties shall have 30 days to request a reconsideration of the termination action. Said request shall be in writing to the Quality Assurance Program address, and shall include written material supporting the appeal. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(c) NOAA's decision, either the original decision if unappealed within 30

days, or the decision after the request for reconsideration, shall be considered final.

**§ 996.32 Appeals.**

(a) Any entity may appeal a final decision made by the Agency under this Quality Assurance Program. Said appeal shall be submitted in writing to the Quality Assurance Program address, and shall contain at least:

(1) Identification and contact information of the appealing entity;

(2) A statement that this is an appeal to a final decision of the Quality Assurance Program;

(3) A description of what decision is being appealed;

(4) A thorough but concise argument as to why the requestor believes the Quality Assurance Program decision being appealed should be set aside.

(5) Other information as may later be determined to be relevant.

(b) Appeals shall be arbitrated by the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, using procedures to be established at the time of the appeal, and which shall be appropriate to the nature and circumstances of the appeal. The determination from this arbitration shall be final for purposes of judicial review under the Administrative Procedure Act and other statutes.

**§ 996.33 Acceptance of program by non-Federal entities.**

By their voluntary entrance or participation in this Quality Assurance Program or its activities, all parties acknowledge and accept the procedures established by this program, including the finality of decisions. All parties acknowledge and accept that information submitted to NOAA under this Program shall be deemed to be in the public domain, and no representation is made as to the protection of confidential, proprietary or otherwise restricted information.